

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

462M0626

## HOUSE BILL NO. 1178

Introduced by: Representatives Elliott, Frost, and Novstrup and Senators Koetzle, Hundstad, Napoli, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of certain honorary trusts  
2 and of certain trusts for animals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Subject to the provisions of section 3 of this Act, a trust may be performed by the trustee for  
7 twenty-one years but no longer, whether or not the terms of the trust contemplate a longer  
8 duration if the trust is for a specific lawful noncharitable purpose or for lawful noncharitable  
9 purposes to be selected by the trustee.

10 Section 2. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Subject to the provisions of section 3 of this Act, a trust for the care of a designated animal  
13 is valid. The trust terminates when no living animal is covered by the trust. A governing  
14 instrument shall be liberally construed to bring the transfer within this section, to presume  
15 against the merely precatory or honorary nature of the disposition, and to carry out the general



1 intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

2 Section 3. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any trust provided for by sections 1 and 2 of this Act is subject to the following provisions:

5 (1) Except as expressly provided otherwise in the trust instrument, no portion of the  
6 principal or income may be converted to the use of the trustee or to any use other  
7 than for the trust's purposes or for the benefit of a covered animal;

8 (2) Upon termination, the trustee shall transfer the unexpended trust property in the  
9 following order:

10 (a) As directed in the trust instrument;

11 (b) If the trust was created in a nonresiduary clause in the transferor's will or in a  
12 codicil to the transferor's will, then under the residuary clause in the  
13 transferor's will; and

14 (c) If no beneficiary results from the application of subsection (a) or (b) of this  
15 subdivision, then to the transferor's heirs under § 29A-2-711;

16 (3) For the purposes of § 29A-2-707, the residuary clause is treated as creating a future  
17 interest under the terms of a trust;

18 (4) The intended use of the principal or income may be enforced by a person designated  
19 for that purpose in the trust instrument or, if none, by an individual appointed by a  
20 court upon application to it by that person;

21 (5) Except as ordered by the court or required by the trust instrument, no filing, report,  
22 registration, periodic accounting, separate maintenance of funds, appointment, or fee  
23 is required by reason of the existence of the fiduciary relationship of the trustee;

24 (6) A court may reasonably reduce the amount of the property transferred if it determines

1           that that amount substantially exceeds the amount required for the intended use. The  
2           amount of the reduction, if any, passes as unexpended trust property under  
3           subdivision (2) of this section;

4       (7)   If no trustee is designated or no designated trustee is willing or able to serve, a court  
5           shall name a trustee. A court may order the transfer of the property to another trustee  
6           if required to ensure that the intended use is carried out and if no successor trustee  
7           is designated in the trust instrument or if no designated successor trustee agrees to  
8           serve or is able to serve. A court may also make such other orders and determinations  
9           as are advisable to carry out the intent of the transferor and the purpose of this Act.